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7 United States of America

8 IN THE UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10  
11 UNITED STATES OF AMERICA,

CASE NO. 2:22-cr-00058 DJC

12 Plaintiff,

13 v.

14 MICHAEL MOTLEY,

STIPULATION AND PROTECTIVE  
ORDER BETWEEN THE  
GOVERNMENT AND DEFENDANT  
MOTLEY REGARDING DISCOVERY

15 Defendant.

16  
17 **I. STIPULATION**

18 1. Plaintiff United States of America, by and through its counsel of record, Alexis Klein,  
19 and defendant Michael Motley, by and through his counsel of record, Chris Cosca (“defendant”),  
20 hereby stipulate, agree, and jointly request that the Court enter a Protective Order in this case  
21 restricting the use and dissemination of certain materials containing personal identifying information  
22 (“PII”) of real persons and other confidential information of victims, witnesses, and third parties.

23 2. As part of its investigation in this case, the government is in possession of materials  
24 relating to the charges against the defendant (and charged co-defendants), including voluminous  
25 bank records, business records, account information, and other evidence that contains PII and other  
26 confidential information for real persons, including, among other things, personal names, Social  
27 Security numbers, Driver’s License numbers, and dates of birth. These real persons include victims,  
28 witnesses, and/or third parties to this case. The government seeks to provide these materials to

1 counsel for the defendant.

2       3. The purpose of the proposed Protective Order is to prevent the unauthorized  
3 dissemination, distribution, or use of materials containing the PII and confidential personal  
4 information of others. If this information is disclosed without protective measures, or to defendant  
5 without limitation, it will risk the privacy and security of the people to whom the information relates.  
6 The information could itself be used to further criminal activity if improperly disclosed or used. The  
7 United States has ongoing statutory and ethical obligations to protect victims.

8       4. Due to the nature of this case, including the extensive financial records involved, PII  
9 makes up a significant part of the discovery materials, and this information in many instances has  
10 evidentiary value itself. The large quantity of privacy-protected information would be difficult or  
11 time-consuming to redact. Further, if the government were to attempt to redact all this information,  
12 the defense would receive a set of discovery that would be confusing, difficult to understand, and  
13 could inhibit prompt and just resolution of the case.

14       5. Accordingly, the government and defendant (collectively the “parties”) jointly request  
15 a Protective Order that will permit the government to produce discovery that is unredacted, but  
16 preserves the privacy and security of victims, witness, and third parties. The parties agree that the  
17 following conditions, if ordered by the Court in the proposed Protective Order, will serve the  
18 government’s interest in maintaining the privacy and security of victims and third parties, while  
19 permitting the Defense Team (as defined below in subsection II.B.) to understand the United States’  
20 evidence against the defendant.

21       6. This Court may enter protective orders pursuant to Rule 16(d) of the Federal Rules of  
22 Criminal Procedure, Local Rule 141.1, and its general supervisory authority.

23           **II. PROPOSED PROTECTIVE ORDER**

24           **A. Protected Materials**

25       7. This Order pertains to all discovery provided or made available to defense counsel in  
26 this case (hereafter, collectively “Protected Materials”).

27       8. For purposes of this Protective Order, the term “Personal Identifying Information”  
28 (“PII”) includes any name, social security number, date of birth, State or government issued driver’s

1 license or identification number, alien registration number, government passport number, employer  
2 or taxpayer identification number, fingerprint, unique electronic identification number, address or  
3 routing code, license plate number, address, vehicle identification number, FBI and CII number and  
4 any other similar identifier, and information within the definition of an “access device” under 18  
5 U.S.C. § 1029(e)(1).

6 9. To the extent that notes are made that memorialize, in whole or in part, the PII in any  
7 Protected Materials, or to the extent that copies are made for authorized use by members of the  
8 Defense Team, such notes, copies, or reproductions become Protected Materials, subject to the  
9 Protective Order and must be handled in accordance with the terms of the Protective Order.

10 **B. Defense Team**

11 10. For purposes of this Order, the term “Defense Counsel” refers to a defendant’s  
12 counsel of record.

13 11. For purposes of this Order, the term “Defense Team” refers to (1) a defendant’s  
14 counsel of record, (2) other attorneys at that defense counsel’s law firm or defense organization who  
15 may be consulted regarding case strategy in the above-captioned matter, (3) defense investigators  
16 who are assisting a defense counsel with this case, (4) retained experts or potential experts, and (5)  
17 paralegals, legal assistants, and other support staff to a defendant’s counsel of record providing  
18 assistance on this case. The term “Defense Team” does not include any defendant, any defendants’  
19 family, or other associates of any defendant.

20 12. Defense Counsel must provide a copy of this Order to all members of the Defense  
21 Team, prior to providing any Protected Materials to the members of the Defense Team. As to any  
22 members of the defense team that are not employed in the same office as defense counsel, such as  
23 retained or potential experts, Defense Counsel must obtain written acknowledgement from those  
24 members of the Defense Team that they are bound by the terms and conditions of this Protective  
25 Order. The written acknowledgement must be maintained by defense counsel until final disposition  
26 of the case, including exhaustion of direct and collateral appellate proceedings, but need not be  
27 disclosed or produced to the United States unless ordered by the Court.

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1                   **C. Disclosure of Protected Materials**

2                   13. No person or party shall use any Protected Materials or information derived from  
3 Protected Materials produced in this action for any purpose other than use in the above-captioned  
4 case. All Protected Materials shall be used solely for the purpose of conducting and preparing for  
5 pre-trial, post-trial, and appellate proceedings (both direct and collateral) in this criminal action and  
6 for no other purposes whatsoever. All Protected Materials shall not be used for the economic or  
7 other benefit of the defendants or any third party. Protected Materials may be disclosed only to the  
8 categories of persons and under the conditions described in this Order.

9                   14. Defendant may review Protected Materials in this case only in the presence of a  
10 member of the Defense Team, and Defense Counsel shall ensure that defendant is never left alone  
11 with any Protected Information. Defendant may not copy, keep, maintain, or otherwise possess any  
12 of such Protected Materials at any time. Defendant must return any Protected Materials to the  
13 Defense Team at the conclusion of any meeting at which defendants review the Protected Materials.  
14 Defendant may not take any Protected Materials out of the room in which they are meeting with the  
15 Defense Team. Defendant may not write down or memorialize any PII contained in the Protected  
16 Materials. At the conclusion of any meeting with defendant, the member(s) of the Defense Team  
17 present shall take with him or her all Protected Materials. At no time, under any circumstances, will  
18 any Protected Materials be left in the possession, custody, or control of the defendant.

19                   15. The Defense Team may review Protected Materials with a witness or potential  
20 witness in this case, including the defendants, subject to the requirement above that a member of the  
21 Defense Team must be present if Protected Materials are being shown to the defendants. Before  
22 being shown any portion of the Protected Materials, however, any witness or potential witness,  
23 including the defendant, must be informed of the existence of the Protective Order and given a copy  
24 of the Protective Order. No witness or potential witness may retain Protected Materials, or any copy  
25 thereof, after his or her review of those materials with the Defense Team is complete.

26                   16. This Order does not limit employees of the United States Attorney's Office for the  
27 Eastern District of California from disclosing the Protected Materials to members of the United  
28 States Attorney's Office, law enforcement agencies, the Court, and defense.

1       17. Defense Counsel shall advise the United States with reasonable notice of any  
2 subpoenas, document requests, or claims for access to the Protected Materials by third parties if  
3 Defense Counsel is considering disseminating any of the Protected Materials to a third party, so that  
4 the United States may take action to respond to such demands as it may deem appropriate.

5       **D. Ensuring Security of Protected Materials**

6       18. The Defense Team shall maintain the Protected Materials safely and securely, and  
7 shall exercise reasonable care in ensuring the security and confidentiality of the Protected Materials  
8 by storing the Protected Materials in a secure place, such as a locked office, or otherwise secure  
9 facility where visitors are not left unescorted.

10      19. A copy of the Protective Order must be stored with the discovery, in paper form and  
11 electronically.

12      20. To the extent that Protected Materials, or any copies or reproductions thereof, are  
13 stored electronically, the Protected Materials will be stored on a password-protected or encrypted  
14 storage medium, including a password-protected computer, or device. Encryption keys must be  
15 stored securely and not written on the storage media that they unlock.

16      21. If a member of the Defense Team makes, or causes to be made, any further copies of  
17 any of the Protected Materials, Defense Counsel will ensure that the following notation is written,  
18 stamped or inscribed on whatever folder, container, or media contains the copies: "PROTECTED  
19 MATERIALS-SUBJECT TO PROTECTIVE ORDER." For example, if Defense Counsel makes a  
20 copy of a disc or physical file containing Protected Materials, the duplicate disc or file must be  
21 encrypted and marked with the above notation.

22       **E. Filings**

23      22. In the event that a party needs to file Protected Materials containing PII, or materials  
24 otherwise identified as containing confidential information of victims, witnesses, or third parties  
25 with the Court, or disclose PII in court filings, the filing should be made under seal as provided for  
26 by the local rules. If the Court rejects the request to file such information under seal, the party  
27 seeking to file such information shall provide advance written notice to the other party to afford such  
28 party an opportunity to object or otherwise respond to such intention. If the other party does not

1 object to the proposed filing, the party seeking to file such information shall redact the PII or  
2 confidential materials and make all reasonable attempts to limit the divulging of PII or confidential  
3 materials.

4 **F. Conclusion of Prosecution**

5 23. The provisions of this Order shall not terminate at the conclusion of this prosecution.  
6 All Protected Materials subject to the Protective Order maintained in the Defense Team's files shall  
7 remain subject to the Protective Order unless and until such Order is modified by the Court.

8 24. Upon final disposition of the case, including exhaustion of direct and collateral  
9 appellate proceedings, Defense Counsel shall return the Protected Materials to the government, or  
10 certify in writing that the Protected Materials have been destroyed. If any Protected Materials are  
11 used as defense exhibits, they shall be maintained with government exhibits so long as those are  
12 required to be maintained.

13 **G. Termination or Substitution of Counsel**

14 25. In the event that there is a substitution of counsel prior to final disposition of the case,  
15 new counsel of record must join this Protective Order before any Protected Materials may be  
16 transferred from the undersigned defense counsel to the new defense counsel. New defense counsel  
17 then will become Defense Counsel for purposes of this Protective Order, and become Defense  
18 Team's custodian of materials, and shall then become responsible, upon the conclusion of appellate  
19 and post-conviction proceedings, for complying with the provisions set forth in subsection F, above.  
20 All members of the Defense Team, whether current or past counsel, are at all times subject to the  
21 Protective Order and are not relieved by termination of representation or conclusion of the  
22 prosecution.

23 **H. Modification of Order**

24 26. Nothing in this Order shall prevent any party from seeking modification to the Order  
25 or from objecting to discovery it otherwise believes to be improper. Nothing in this Order shall  
26 prevent any party from seeking a more restrictive protective order with regard to particular discovery  
27 items.

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1           **I.       Violation of Order**

2       27.      Any person who willfully violates this Order may be held in contempt of court and  
3 maybe subject to monetary or other sanctions as deemed appropriate by the Court. This provision  
4 does not expand or narrow the Court's contempt powers.

5           **J.       Application of Laws**

6       28.      Nothing in this Order shall be construed to affect or comment on the admissibility or  
7 discoverability of the Protected Materials.

8       29.      Nothing in this Order shall be construed to affect the application or and the parties'  
9 compliance with the Federal Rules of Criminal Procedure, Local Rules, and applicable statutes.

11           Dated: October 23, 2023

12           PHILLIP A. TALBERT  
United States Attorney

13           By: /s/ ALEXIS KLEIN  
14                    ALEXIS KLEIN  
15                    Assistant United States Attorney

16           Dated: October 24, 2023

17           By: /s/ CHRIS COSCA  
18                    CHRIS COSCA  
19                    Counsel for Defendant  
20                    MICHAEL MOTLEY

## **FINDINGS AND ORDER**

The Court having read and considered the Stipulation and Joint Request for a Protective Order, which this Court incorporates by reference into this Order in full, hereby finds that GOOD CAUSE exists to enter the above Order.

IT IS SO FOUND AND ORDERED.

Dated: October 24, 2023

  
DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE